

DELTA PROTECTION COMMISSION
Thursday, July 29, 1993

-----Draft Minutes-----

I. CALL TO ORDER

Chairman Torlakson called the meeting to order at 6:30 p.m. in the Jean Harvie Community Center Auditorium in Walnut Grove.

Present were Commissioners Torlakson, Fargo, Barber, Murphy, Bland, Potter, Sekelsky, Yates, Calone, Curry, Ferreira, McCarty, Mello, and Salmon. Commissioner Keller arrived late. Not present were Commissioners Broddrick, Johnson, McGowen, and Thompson. Staff present: Margit Aramburu, Executive Director; Rick Frank, Deputy Attorney General; and Caroline Haigh, Special Assistant to the Secretary for Resources

II. PLEDGE OF ALLEGIANCE

III. ADOPTION OF JUNE MINUTES

Commissioner Fargo moved seconded by Commissioner Potter

IV. CHAIRMAN'S REPORT

Mr. Torlakson announced that the Commission's new office space as of August 2, 1993 will be located at 14219 River Road, PO Box 530, Walnut Grove, CA 95690.

Thanks to arrangements made by Commissioner Keller, the next Commission meeting is August 26, 1993 in Antioch. At this meeting the appeals process will be discussed and approved for final adoption.

The administrative subcommittee meeting that was to be held prior to the Commission meeting did not occur due to budgetary issues and will be rescheduled.

There is a need to track legislation related to Delta. Chairman Torlakson proposed having three Commissioners sit on a committee to oversee the monitoring. This committee will not need to meet regularly; it can keep in touch through the phone.

An added component of the Commission will be to track and promote all the special events occurring in the Delta.

V. SUBCOMMITTEE REPORT

(None given)

VI. EXECUTIVE DIRECTOR'S REPORT

Ms. Aramburu reported that:

- * updated rosters are available;
- * her salary details are settled;
- * the Commission office will open next Monday, thanks to the Department of Conservation, the State Lands Commission, San Francisco Bay Conservation and Development Commission, and California Conservation Corps for offering furniture and people to help move. Ms. Debra Eddy has been hired as the secretary and will start working August 16th.
- * Copies of the Williamson Act materials from last meeting are available
- * A Delta atlas was given by Commissioner Potter and DWR; Potter interjected to say that the Commission is recognized in the atlas.

VII. ATTORNEY GENERAL'S REPORT

Next month the Commission must hold a hearing to adopt two sets of regulations. The first is the Conflict of Interest Regulations. Mr. Frank is having the head of the Fair Political Practices Commission give an overview of this process at the next meeting.

Commissioner McCarty asked if those with reporting forms that are already filed would be subject to these new rules? Mr. Frank said it is unlikely that reporting requirements are identical, making the present files insufficient to fulfilling your obligations, but in the future there will be one document.

Commissioner Fargo asked if Commissioners get instructed as to how to fill out the forms? Mr. Frank said the Commission staff will try to get someone to walk through the process with them.

Commissioner Murphy asked if the Commission require additional filing above what we have already done? Mr. Frank said maybe not, but the best thing to do is to consider and adopt a code and then deal with reporting requirements.

The second set of regulations to be dealt with at the next meeting are the administrative procedures. These regulations were compiled from Commissioners' suggestions and older regulations. They are subject to substantial modifications, as part of hearing next month. Also, the regulations do not attempt to provide any substantive policy direction as to how to decide on appeals; they are a value-neutral process.

Copies of these regulations will be provided to any interested parties and can be obtained through Attorney General's office.

Commissioner Torlakson suggested developing a potential list of interested parties and notifying them of the discussion to take place at the next Commission meeting of these two legal issues. Torlakson asked Commissioners to think of any other groups who may be interested. Mr. Frank will work with Ms. Aramburu during the next couple days to generate a list of interested parties to whom to send copies, with Commissioner input.

A couple meetings ago, there was a discussion of the MegaSand Corporation dredge activities. At present, the Notice of preparation of an Environmental Impact Report on the project has been received; any Commissioners or audience interested in receiving this information can contact the Attorney General's Office.

VIII. INFORMAL BRIEFING: RECREATION: PARKS AND ACCESS

Commissioner Torlakson thanked all who participated in earlier briefings for the Commission. Next month's briefing topic might be flooding in light of the floods occurring in the Midwest.

Ms. Aramburu introduced the speakers:

A. DELTA CHAMBERS - David Smith

The Delta Chambers is the only organization formed to treat the Delta as one area. This organization was originally set up by a consortium of chambers of commerce after Prop 13, with the primary purpose being to promote recreational use of the Delta. The Delta Chambers operates at boat shows, distributes a publication, hosts mixers once a month, and holds a fundraiser every year. The Commissioners are invited to attend next month's mixer.

Recreational use of the Delta began in the 1930's. Development in the Delta has preceded without any kind of comprehensive plan and without the residents comprehension of the development happening in the Delta around them. The result is the development that has occurred as a response to a local need, rather than a comprehensive one; local needs do not have same perspectives.

Facilities range in size, purpose, and quality. Highway 12 is the only highway running east-west through the Delta and therefore carries a lot of traffic. Furthermore its inadequate size has prohibited larger hotels from being built.

The recreation community in the Delta is not new and has no consistency. Currently there is a shortage of recreational activities in the Delta due to the economy. But over time the demand will increase. To handle the increase, standards should be developed, perhaps by the Delta Protection Commission, to

The State Parks main presence in the Delta is Brannan Island which formerly was swampland. Purchased in 1954, Brannan Island is primary public access in the Delta; it has a 6-lane boat launch ramp, slips and camping. The Island has a general plan which proposes development across the entire island with \$300,000 committed for development of floating boardwalks, wetland areas, fish cleaning stations, etc.

From these examples it is clear that the State Parks have been a part of the Delta for many years and is there to supply recreation access to public. Future plans for the Delta need to extend that presence.

Commissioner Sekelsky: Use of revenue from gas wells?

Controlled by the State Lands Commission, the wells are leased out by the Reclamation Board and 2 other companies. But what the state is getting back from those is unknown. The State Parks has little control as to what fund the money is deposited.

Commissioner Murphy: The money came from the original bond Act. With recent acquisitions where uses are leased, the money is put back to wildlife conservation.

The following statistics were given by Dave Nelson:

- * Average stay in the Delta is 1-3 days;
- * Majority of users are male between 25-34 yrs;
- * Most travel less than 50 miles to come to park; most originating from the Bay Area.

Ms Aramburu: Family oriented beach facility and public coast program where members volunteer their services to supervise the campgrounds are examples of doing more with less.

**D. DEPARTMENT OF BOATING AND WATERWAYS: BARRIER-FREE ACCESS -
Commissioner Curry (slide presentation)**

Every person here is involved in barrier-free access; everyone was able to attend this meeting by travelling from point A to point B. But that is not the case for everyone.

Boaters, fishermen, waterskiers, larger body cruisers, kayakers, rafters, jet skiers all need access to the water and are involved in barrier free access. Handbooks are being written for barrier-free access but to get the facilities legislation is necessary.

History of Federal Barrier-Free Design Legislation:

- *Civil Rights Act of 1964 - Barrier-Free boating facilities
- *Architectural barriers Act of 1968-provided that federally owned buildings needed to be accessible
- *Rehabilitation Act of 1973 - dealt with vocational rehabilitation but a specific part created the ATBCB which created building, walkways, etc.

*1984 - ATCBC created UTU Standards

Legislation has brought side slopes, entrances to buildings, parking lots to people with disabilities, 32 inch clear doorways, and restrooms large for wheel chairs.

*Americans with Disabilities Act July 26, 1990 (ADA)

Amends Act of 1973 and extends section 504 regulations and confirms and reinforces prior legislation.

Barrier-Free Access addresses all public facilities, public programs, regardless of funding and addresses private facilities.

The penalties are as follows: USAG can initiate suits, individuals can file against public or private entities. Ability of compliance is the responsibility of the owners.

make the recruiting process for recreational outlets easier. The last thing anyone wants is another layer of permits.

Every study on the Delta has determined recreation is a beneficial use, yet whenever anyone tries to develop recreational facilities they are met with opposition. Delta businesses face a lot of challenges with all the regulations and standards. What is needed is a rational balance between providing recreational opportunities to the public and preservation of the environment.

Recreation use is one of the most important functions of the Delta as we know it. All future planning for the Delta's recreational uses should be protected and prioritized.

Commissioner Murphy: What kind of opposition are recreational developers met with?

Example: The determination that too many boats in the Delta inhibited a project that Mr. Smith felt was compatible -process ended up taking 4 years to get approved.

Commissioner Torlakson: The Commission will be closely looking at the role it can play in the development of recreation in the Delta.

B. EAST BAY REGIONAL PARK DISTRICT (EBRPD)- Bob Doyle, Assistant General Manager

EBRPD has a message: How do you do more with less? This can be done with the Delta Protection Commission debating the opportunity to work with existing agencies to create partnerships between cities, state, and federal levels.

Degradation of the Delta has been partly due to the inability to forge partnerships. The Delta Protection Commission has the opportunity to put forward creative ideas and form partnerships in land use and other areas.

Demand for recreation has increased while dollars decrease. An example of this is with the park reservation district program doubling in use without any marketing. With the economy in a slump the demand has increased local, low-cost forms of recreation. EBRPD wants the Commission to look beyond boundaries of agencies. It is necessary to utilize land use standards beyond city and county boundaries and set some priorities as to what are the wildlife, land-use, and recreation priorities and then pool the resources of the various agencies.

The Commission needs to encourage agencies to drop barriers and work together to dedicate lands, parks, (ie. big regional parks rather than one local park). It is ineffective to have five or six agencies in a defined area to do it alone, rather Joint Power Authorities and such need to be formed with the purpose of creating new recreation opportunities in the Delta.

All of these actions are essential for good positive growth in the region. EBRPD has good partnerships with state and local parks and encourages similar efforts in the Delta region.

C. STATE DEPARTMENT OF PARKS AND RECREATION - Dave Nelson

State parks has had presence in the Delta since the 1950s (used map to illustrate this point). The Delta Meadows is one example of the State Parks' presence based solely on the need for providing public recreation access. The Delta Meadows is a new acquisition which used to be part of the railroad.

Frank's Tract, another State Park Delta acquisition, purchased in 1959, consists of two islands which are underwater. Fishing and waterfowl hunting are the main activities on the land. The general purpose of such acquisitions is to perpetuate a recreation resource, offering opportunities for water recreation; The State Parks want to offer facilities which enable public enjoyment of such resources.

Commissioner Torlakson: Contra Costa County trying to set up wetlands mitigation banking area, asked how area will be maintained and managed.

People who own land in Delta do not want their land to be changed into housing but economic situation sometimes forces that choice; landowners would like to participate in preserving Delta.

X. APPOINTMENT OF ADVISORY COMMITTEES

Some people on the list were nominated and some volunteered. Ms. Aramburu presented the Commissioners with various options.

Commissioner Salmon suggested that we hold off or allow additions. He is concerned with the issue of balance between northern and southern representation.

Commissioner Fargo wants to understand the purpose of these committees, does not want them to get too large, and did not know about all the people on the list.

Ms. Aramburu explained that the role of these committees is to work with staff and generate ideas that should be addressed in a series of background reports. She is not familiar with all the people nominated either but these were the people who were able to commit time and had been nominated by Commissioners.

Commissioner McCarty thinks the advisory committees need more structure (i.e. define number of people, mission, and purpose). He was comfortable accepting the names on the list as long as more can be added with in reason.

Commissioner Murphy wanted to see an application process developed and have all candidates fill one out as well as create mission statements for each of the advisory committees--need more structure with committees.

Commissioner McCarty said that adding structure to committees will make them more valuable to the Commission.

Commissioner Murphy: Structure will increase the integrity of the process toward public concerns.

Commissioner Potter: Processes like this need some fluidity and the extent of people's commitment cannot be determined upfront.

Commissioner McCarty suggested that in the interest of time, the Commission should adopt the present names and then create a structure around them, adding names as appropriate.

Commissioner Murphy seconded McCarty's proposal.

The Commission staff will request additional materials and information on people and the Administration Committee will aid in development of mission statements for each committee.

Ms. Aramburu: It is unique to have special advisory committee with public involvement but it is not the only way for the public to be involved in the process. Input from experts in the community will be sought as well as others in the community.

Chairman Torlakson claled for a voice vote; the motion passed.

XI. COMMISSIONERS COMMENTS

Commissioner Curry: The Department of Boating and Waterways is to be the organization to coordinate with the Fish and Wildlife Service on the Clean Vessel Act, money disbursement of the federal gas tax money form boats to come back into local areas in the forms of grants. If Commissioners or the public are involved in programs in need of money for sanitary facilities, they can get up to 75% federal moneys through these grants.

Who is included in the group of persons of disabilities?

Various races, fishermen, men and women, adults, kids, basically everyone. In California there are 4-5 million people who are legally considered disabled.

Design features affected?

ADA and ATCBC are still in the process of viewing the law as it applies to boating facilities which won't be definitive until 1994. Other design features affected are public walkways, boat launching ramps, paved walkways to fishing spots, educational facilities, marina access including telephone boxes, large cracks in walkways, and distances between vertical obstacles.

Americans with disabilities need to be provided with the best possible access to recreational opportunities in the Delta. An opportunity for the Delta Protection Commission is to bring various components of recreation issues and facilities together to pool resources in order to provide better recreation access overall.

Commissioner Torlakson: how does public give input to this process?

Public hearings will be held in 6 months.

IX. SPECIAL BRIEFING - Tom Zuckerman, Delta Habitat Conservancy

Mr. Zuckerman presented the Delta Protection Commission with a document that discusses how to preserve the middle portion of the Delta in the face of ever-increasing financial burden and diminishing returns situation with agriculture. The document discusses how to develop mitigation banking concept: take funds from people interested in developing land outside the Delta and preserve the land in the Delta. The document has been passed to various people in the Department of Fish and Game and The Nature Conservancy and received enthusiastic feedback.

After writing the document, Mr. Zuckerman then got involved in the Wildlife Subcommittee which has a Delta subcommittee. This group reviewed Mr. Zuckerman's document and wanted to implement many of his suggestions, backed with money.

Mr. Zuckerman feels the Commission is helpful but not if it creates another set of regulation; another layer will sink the Delta faster than it will save it. Conservation easements need to be part of the lobbying effort for the Delta Protection Commission.

The Delta Habitat Conservancy, chaired by Bob Eberhart, is another tool available to the Delta Protection Commission in its efforts to take uncontiguous lands in the Delta and preserving them for future generations. Other members of the Conservancy here are Dr. Margaret Grace, Martha Shaver, and David Fisher.

Mr. Zuckerman wants this Conservancy to be helpful in showing landowners other ways of preserving their farming and bridging gaps of communication.

Commissioner Murphy: How is this group cooperating with other conservancies and land owners?

The Conservancy is brand new and has not had any reason to deal with other groups. But the North Delta Conservancy has same goals so they do not foresee conflicts.

Commissioner Torlakson: Are you developing direct relationships with counties to encourage idea of mitigation banking and conservation easements?

The Conservancy is planning on that but again the group has just been formed.

Commissioner Bland: The idea sounds like a solution to the problem but I am concerned about the impact of the money mechanism on cities and counties? (2nd paragraph in document)

Money that is to be imposed needs to be spent on a more organized basis, because otherwise these entities may pick cheap, isolated sites, with lesser habitat values.

Chairman and members,
Delta Protection Commission

PUBLIC COMMENTS

July 29, 1993

Sirs:

I am going to present two points and tie them together: 1) The Attorney General opinion about this Commission to which both Richard Gann and I submitted written input and 2) the oath of office you took to be on this Commission.

ATTORNEY GENERAL OPINION: The Attorney General opinion backs his client, the legislature. We note a classic set of purposes of evasion and mental reservations about the intent of the California Constitution. But then is not that a purpose of that office? We would only add that case law such as presented in the opinion 93-313 is a display of situational law.

Situational law is of course the legal profession's extension of situational values. Those of you with children know that it was the situational values taught in the public schools that made it so difficult for you to raise your offspring, those school teachings aimed to undermine your home authority.

The intent of the California Constitution is clear, is spelled out - NO CONSOLIDATION OF COUNTIES without voter approval. A County is its bounded land AND the jurisdictional elected governance. The legislature's authority does not supercede the California Constitution authority. The Act establishing this Commission, at the social level is routinely recognized as aimed at the control of private property land use, that the act was written to evade elected jurisdictional authority. The legislative findings forming the basis of this set of evasions and mental reservations are political science findings. Political science findings, compared to scientific science findings, by definition have an ulterior bias.

About the origins of the declared dangers to the "habitats", "endangered species", the sacredness of the "fishies and birdies", etc I refer you to "The Report from Iron Mountain", about 1965. That book, written by one who attended, describes the "think tank" basis of the decision of the elitists: Substitute "Wars for the Environment" for "Wars between Nations".

OATH of OFFICE: The oath of office you took is not the one specified in the Calif Constitution, Art XX, Sec 3. That is two paragraphs. I have a copy of that oath here. The one you took and signed was one paragraph. Example of "Situational law."

Between 1967 and 1981 three people protested the second paragraph of the oath for elected and employed personnel in the State of California. The Calif Constitution has not changed. One of the three individuals went to US Supreme Court which declined the case. It was a State Constitution matter.

Result: California Courts unilaterally decreed the second paragraph be stricken, the first one alone would do.

Again, those with mental reservations and those who exercise purposes of evasion about the California Constitution, will argue that swearing to and signing the first paragraph does establish the basic contract between the people from whom the governing powers are derived AND those who do the governing AND therefore the first paragraph, after all, is all it should take, so that's good enough. Again, Constitutional law or rule by men? THE QUESTION!

SUMMARY: I am not an expert on land use of private property. I do know something about incentives, motives and appetites of men.

I don't know much about farming. It's been a few years since my youth when our family proved up on our homestead.

Commissioner Fargo: City of Sacramento will be buying a used barge and historic ferry to move another floating restaurant to Old Sacramento.

Commissioner McGowan: Problem with meeting sites? Commissioner Torlakson explained that deliberation over this matter will occur in the Administration Committee. If anyone has specific comments they should submit them to McGowan--place and location of future committee meetings.

Commissioner McCarty thanked the public for being patient and felt that the Delta Protection Commission is moving beyond the setting up phase and onto the "doing" phase.

XII. PUBLIC COMMENTS

The next Delta Chambers mixer will be held at the Tower Point Marina on August 11th

Dr. Ernst: (see written testimony)

The Attorney General came out with opinion stating that the Delta Protection Commission is constitutional. Yet the oath of office taken by the Delta Protection Commission is not one specified by the Constitution; the Commissioners took a one paragraph oath rather than the two paragraph one.

Do we have law by constitution or law by men? The Commission needs to respect the value of private property. This Act and Commission was created to control land use

Commissioner Torlakson will develop a calendar of events taking place around the Delta..

XIII. ADJOURNMENT

There being no further old or new business, the meeting adjourned at 9:50 p.m.

One man's ugly is another's beauty. One man's garbage is another's gold.

I do know the appetite to enforce one's own opinions and prejudices onto other is as old as the ages. Respect for the other man and his property is especially hard to hold onto when you have some power over them.

POWER AND CONTROL over others is one of the most addictive of all drugs. It is at least as addictive as heroin. "Power corrupts. Absolute power corrupts absolutely." The players in the Addict Game as one of the Games People Play are 1) The Addict, 2) The Connection (Supplier), 3) The Fuzz (Controller) and 4) The Friend. The intricacies of the moves in the POWER Addict game are as complex as any Addict game. Subterfuges, betrayals, duplicity, "talking out of both sides of the mouth", etc. The Savings and Loan scandals are more understandable as variants of the Addict Game. Keep this in mind when you think "You gotta go along to get along!"

What does this have to do with the Delta Protection Commission? Some of you on this commission may remember these words as events unfold and befall you individually down the line.

Signed,

F H Ernst Jr

